

REMARKS

Claims 1-16 and 18-23 are now pending in the application, with claims 1, 2, 7, 10, 13 and 20 being the independent claims. Reconsideration and further examination are respectfully requested.

In the Office Action, claims 1, 2, 4-6, 8, 9, 11-16 and 18 were rejected under 35 USC § 102(b) over U.S. Patent 5,274,949 (Beaton); and claims 3, 7, 10, 17 and 19 were rejected under § 103(a) over Beaton. Withdrawal of these rejections is respectfully requested for the following reasons.

The present invention pertains to an apparatus for capturing live insects. An upper section of the apparatus houses a light source, and has side walls, a top cover, and plural openings in the side walls that are large enough to permit insects to enter. The apparatus also includes an enclosed lower section and a funnel between the upper section and such lower section, with the funnel having a wide opening adjacent to the upper section and tapering to a narrow opening within the lower section.

Additional features are provided in various aspects of the invention, and certain of the previous dependent claims have been rewritten into independent form to emphasize such features. As described in more detail below, none of such additional features is believed to be disclosed or suggested by the applied art.

For instance, the limitations of previous dependent claim 17 have been incorporated into independent claim 1, and claim 17 has been canceled above. Accordingly, independent claim 1 now recites the feature that the apparatus includes a removable funnel insert disposed within the funnel, restricting the narrow opening of the funnel to a smaller size. Thus, for example, funnel 94 and/or 96 shown in Figure 5 of

the Specification may be inserted into funnel 90 to reduce the diameter of the lower opening 91 of funnel 90. Such inserts are not disclosed or suggested by the applied art. Rather, with regard to this feature of the invention, the Office Action simply asserts that "it would have been obvious to employ a funnel insert or a funnel with a smaller opening for the purpose of adjusting the size of the opening for different sized insects."

In this regard, MPEP § 2142 requires that in order to establish a prima facie case of obviousness, the examiner must cite prior art references that teach or suggest all of the claim limitations, and if more than one such reference is required to disclose all such limitations, there must be some suggestion or motivation, either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. However, no prior art has been cited to show either the above-referenced feature of the invention or any motivation to combine such a feature into the device of Beaton. Rather, the assertion of obviousness appears to be based solely on hindsight in view of the present Specification, which of course is an impermissible ground for asserting obviousness. For at least these reasons, independent claim 1 is believed to be allowable over the applied art.

Independent claim 2 recites the additional feature that the side walls of the upper section have an inner surface that is reflective. This feature of the invention also is not disclosed or suggested by the applied art. In fact, the Office Action does not even allege that Beaton shows this feature of the invention. To the contrary, Beaton describes his side walls as being transparent. Accordingly, independent claim 2 is believed to be allowable over the applied art.

Independent claim 7 recites the additional feature that the light source is an ultraviolet light source. This feature of the invention also is not disclosed or suggested by the applied art. With regard to it, the Office Action merely asserts that, "it would have been obvious to employ an old and well known ultraviolet light source for the known insect attracting properties." However, while ultraviolet lights clearly are conventional, there is nothing in the applied art that would have suggested incorporating an ultraviolet light into the apparatus described in Beaton. Without any such motivation to combine prior art features, a prima facie case of obviousness under the provisions of MPEP § 2142 cannot be established. Accordingly, independent claim 7 also is believed to be allowable over the applied art.

Independent claim 10 recites the additional feature that the upper section has an outer surface that is substantially entirely dark. This feature of the invention also is not disclosed or suggested by the applied art. In fact, the Office Action does not even allege that Beaton shows this feature of the invention. To the contrary, Beaton describes his side walls as being transparent. Accordingly, independent claim 10 is believed to be allowable over the applied art.

Independent claim 13 recites the additional feature of a cover that attaches to the enclosed lower section when the enclosed lower section is removed from the upper section. This feature of the invention also is not disclosed or suggested by the applied art. With regard to it, the Office Action points to cover 27 in Beaton's specification. However, Figure 3 in Beaton shows cover 27 as attaching to the top of Beaton's upper section, not to the top of his lower section. Moreover, nothing in Beaton appears to

suggest removing cover 27 and placing it on top of Beaton's lower section. Accordingly, independent claim 13 also is believed to be allowable over the applied art.

Newly added independent claim 20 recites the additional feature that the openings cover approximately 30-40% of the total area that would be provided if the side walls were completely closed. It is noted that this feature of the invention finds support, e.g., at page 4 lines 13-16 of the Specification. By providing such a quantity of openings in the upper section of an apparatus according to the present invention, an appropriate balance often can be struck between attracting insects in the first place and ensuring that they do not subsequently escape once they have entered the upper section. Because this feature was not previously claimed, it has not been addressed in the Office Action. However, Applicant has reviewed the prior art in detail and is not able to find any suggestion of such a feature. To the contrary, the drawings in Beaton seem to indicate that his openings cover a much lower percentage of the total area of his upper section. For this reason, independent claim 20 is believed to be allowable over the applied art.

The other claims in this application depend from the independent claims discussed above, and are therefore believed to be allowable for at least the same reasons. Because each dependent claim also defines an additional aspect of the invention, however, the individual consideration/reconsideration of each on its own merits is respectfully requested.

For instance, dependent claim 3 recites the additional feature that the inner surface of the side walls is white. This additional feature of the invention also is not disclosed or suggested by the applied art. With regard to it, the Office Action merely

asserts that, "it would have been obvious to employ a white inner surface of the sleeve since the insects are attracted to light colors." However, nothing in the applied art provides any such motivation or suggestion. Also, it is not clear why one would want to attract insects to the sidewalls once they are inside the upper section. It would seem that if insects are in fact attracted to the side walls in this manner, they would be more likely to escape from the upper section, which of course would be undesirable in view of the main purpose of Beaton's device. To the contrary, the present Specification teaches that by making the inner surface of the side walls reflective or white, the trapped insects are likely to become disoriented, thereby further increasing the likelihood that they will remain within the upper section of the apparatus. See, e.g., page 2 lines 13-19. For the foregoing additional reasons, dependent claim 3 is believed to be allowable over the applied art.

In order to sufficiently distinguish Applicant's invention from the applied art, the foregoing remarks emphasize several of the differences between the applied art and Applicant's invention. However, no attempt has been made to categorize each unobvious difference. Applicant's invention comprises all of the elements and all of the interrelationships between those elements recited in the claims. It is believed that for each claim the combination of such elements and interrelationships is not disclosed, taught or suggested by the applied art.

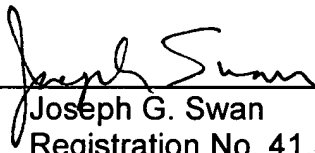
It is therefore believed that all claims in the application are fully in condition for allowance, and an indication to that effect is respectfully requested.

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Respectfully submitted,

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